

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Michael T. Mason	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 8090	DATE	6/1/2004
CASE TITLE	Directv, Inc. vs. Keith Klein		

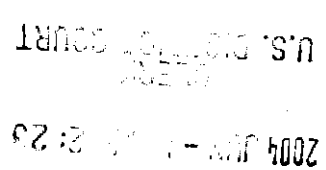
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] As stated in the attached Order, defendant's motion to dismiss Count III is granted and Count V is denied [15-1]. Count III of plaintiff's complaint is dismissed with prejudice. Enter Memorandum Opinion and Order.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.		2	<b>Document Number</b>  18
<input type="checkbox"/>	No notices required.		number of notices	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		JUN 02 2004	
<input type="checkbox"/>	Notified counsel by telephone.		Jxm	
<input type="checkbox"/>	Docketing to mail notices.		6/1/2004	
<input type="checkbox"/>	Mail AO 450 form.		date docketed	date mailed notice
<input type="checkbox"/>	Copy to judge/magistrate judge.		KF	mailing deputy initials
KF      courtroom deputy's initials		Date/time received in Central Clerk's Office		



### ***Legal Analysis***

Klein's motion to dismiss raises two issues. First, as to Count III, we must determine whether §2520 provides a civil right of action for a violation of §2512. Then, as to Count V, we must determine whether plaintiff has stated a valid common law claim for conversion under Illinois law. Neither of these issues are novel and both have been addressed by numerous courts in this district and across the country, with divided results. The Seventh Circuit has not addressed either issue. However, based on the divided results within this district, we predict that it will in the near future.

### ***Count III***

A majority of the courts that have addressed the issue of whether §2520 provides a civil right of action for violation of §2512 have found that it does not. Compare, e.g., *DirecTV, Inc. v. Wilson*, No. 03 C 3516, 2004 WL 1094244 (N.D.Ill. May 13, 2004) (Grady, J.) (no cause of action); *DirecTV, Inc. v. Ostrowski*, No. 03 C 8618, 2004 WL 1102419 (N.D.Ill. May 12, 2004) (Filip, J.) (no cause of action); *DirecTV, Inc. v. Hinton*, No. 03 8477, 2004 WL 856555 (N.D.Ill. Apr.21, 2004) (Darrah, J.) (no cause of action); *DirecTV, Inc. v. Frey*, No. 03 C 3476, 2004 WL 813539 (N.D.Ill. Apr.14, 2004) (Zagel, J.) (no cause of action); *DirecTV, Inc. v. Hauser*, No. 03 C 8396, 2004 WL 813628 (N.D.Ill. Apr.13, 2004) (Moran, J.) (no cause of action); *DirecTV, Inc. v. Maraffino*, No. 03 C 3441, 2004 WL 170306 (N.D.Ill. Jan.23, 2004) (Lefkow, J.) (no cause of action); *DirecTV, Inc. v. Castillo*, No. 03 C 3456, 2004 WL 783066 (N.D.Ill. Jan.2, 2004) (St.Eve, J.) (no cause of action); *DirecTV, Inc. v. Delaney*, No. 03 C 3444, Memorandum Opinion (Nov. 20, 2003) (Kocoras, C.J.) (no cause of action); and

*DirecTV, Inc. v. Westendorf*, No. 03 C 50210, 2003 WL 22139786 (N.D.Ill. Sept.16, 2003) (Reinhard, J.) (no cause of action) *with DirecTV, Inc. v. Dillon*, No. 03 C 8578, 2004 WL 906104 (N.D.Ill. Apr.27, 2004) (Aspen, J.) (cause of action); *DirecTV, Inc. v. Dyrhaug*, No. 03 C 8389, 2004 WL 626822 (N.D.Ill. Mar.26, 2004) (Shadur, J.) (cause of action); and *DirecTV, Inc. v. Gatsiolis*, No. 03 C 3534, 2003 WL 22111097 (N.D.Ill. Sept.10, 2003) (Coar, J.) (cause of action).

After reviewing each of these cases, we believe that the other judges in this district have thoughtfully and thoroughly expressed the competing arguments relating to this issue and we do not have anything further to add to the debate. That said, we agree with the majority of the judges that there is no civil cause of action under §2512 and we adopt the analysis of Chief Judge Kocoras in *DirecTV, Inc. v. Delaney*, 03 C 3444, and the supplemental analysis of Judge Filip in *DirecTV, Inc. v. Ostrowski*, 2004 WL 1102419. Therefore, Count III of the complaint is dismissed with prejudice.

#### **Count V**

The courts in this district are also divided as to whether DirecTV has stated a valid cause of action for conversion under Illinois law, although fewer courts have addressed this issue. *Compare e.g., Wilson*, 2004 WL 1094244 (no cause of action); *Hinton*, 2004 WL 856555 (no cause of action); *Frey*, 2004 WL 813539 (no cause of action); *Maraffino*, 2004 WL 170306 (no cause of action); *Castillo*, 2004 WL 783066 (no cause of action); and *DirecTV, Inc. v. Patel*, No. 03 C 3442, 2003 WL 22682443 (N.D.Ill. Nov.12, 2003) (Coar, J.) (no cause of action) *with Ostrowski*, 2004 WL 1102419 (cause of action); *Dillon*, 2004 WL 906104 (cause of action); *Hauser*, 2004

WL 813628 (cause of action); *Dyrhaug*, 2004 WL 626822 (cause of action); and *Delaney* (cause of action).

Six courts in this district have found that the tort of conversion does not lie under the facts as alleged in the complaint, while five courts have found that it does. As demonstrated by this division, this issue is a close one with colorable arguments on both sides. We agree with the narrow minority and again adopt the analysis of Chief Judge Kocoras and the supplemental analysis of Judge Filip. Therefore, the motion to dismiss Count V is denied.

***Conclusion***

For the foregoing reasons, defendant Keith Klein's motion to dismiss is GRANTED as to Count III and DENIED as to Count V. Count III is dismissed with prejudice. It is so ordered.

ENTER:

A handwritten signature in black ink, appearing to read "Michael T. Mason", is written over a horizontal line.

MICHAEL T. MASON

United States Magistrate Judge

**Dated: June 1, 2004**